

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WHITE – SPUNNER CONSTRUCTION, INC.)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 10-158
)	
ZURICH AMERICAN INSURANCE COMPANY,)	
OWNERS INSURANCE COMPANY,)	
and EMPLOYERS MUTUAL CASUALTY)	
COMPANY,)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY JUDGMENT

I. PARTIES

1. Plaintiff, White-Spunner Construction, Inc. is an Alabama corporation headquartered in Mobile, Alabama.

2. Defendant, Zurich American Insurance Company is an Illinois corporation that insures Building Materials Wholesale, Inc.

3. Defendant, Owners Insurance Company is an Ohio corporation that insures Livingston Construction, Inc. and McAdams Vinyl Siding & Trim, Inc.

4. Defendant, Employers Mutual Casualty Company is an Iowa corporation that insures Moore Electric Company.

II. JURISDICTION

5. Jurisdiction is conferred in this case pursuant to 28 U.S.C. §2201 and §2202, and Rule 57 of the Federal Rules of Civil Procedure.

6. An actual judicial controversy exists between White-Spunner Construction, Inc. (“White-Spunner”) and the Defendant insurers, within the meaning of 28 U.S.C. §2201 regarding the scope and extent of insurance coverage provided under the Defendants’ respective policies which name White-Spunner as an additional insured, as more particularly described below, for the claims asserted by Roberta D. Dueitt, as Administratrix of the Estate of Richard Dewayne Dueitt, Sr.

7. This Court has diversity jurisdiction pursuant to U.S.C. §1332(a)(1) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs and this suit is between citizens of different states.

III. FACTS

8. Plaintiff White-Spunner, contracted with Olde Oak Apartments, Ltd. (“Olde Oak”) to construct an apartment complex in Mobile, Alabama on a “cost plus” basis not exceed \$15,806,250.00. A contract was signed on August 28, 2008 and construction began soon thereafter.

9. As the general contractor, White-Spunner, subcontracted all of the work out to various subcontractors, including Building Materials Wholesale, Inc.; Livingston Construction, Inc.; McAdams Vinyl Siding & Trim; Buena Vista Construction; MK Plumbing, Inc.; and Moore Electric. Building Materials Wholesale hired Jerry Reed Trucking to deliver materials on various occasions.

10. Pursuant to its contract with each subcontractor, White-Spunner required each of the subcontractors to carry commercial general liability insurance in the minimum amount of \$1,000,000.00 per occurrence. In addition, the subcontract agreement required that White-Spunner be named as an additional insured on the subcontractors’ insurance policies.

11. As a result of the insurance requirement, a Certificate of Liability Insurance was issued by Zurich American Insurance Company ("Zurich") that named White-Spunner as an additional insured on General Liability Policy GLO 2866133-07 that issued to Building Materials Wholesale, Inc. with a policy effective date beginning on January 1, 2009 and ending on January 1, 2010. (See Exhibit "1").

12. A Certificate of Liability Insurance was issued by Employers Mutual Casualty Company ("Employers Mutual") that named White-Spunner as an additional insured on its policy issued to Moore Electric Company, policy number 2D14986 with an effective policy period of November 1, 2008 to November 1, 2009. A copy of the Certificate is attached as Exhibit "2".

13. Owners Insurance Company ("Owners") issued a Certificate of Liability Insurance on behalf of its insured, McAdams Vinyl Siding & Trim that named White-Spunner as an additional insured on policy number 38452244-08 with an effective policy date of May 13, 2008 through May 13, 2009. A copy of the Certificate is attached as Exhibit "3".

14. Owners Insurance Company ("Owners") issued a Certificate of Liability Insurance on behalf of its insured, Livingston Construction, Inc., which named White-Spunner as an additional insured on policy number 3815764908 with an effective policy period of August 17, 2008 through August 17, 2009. A copy of the Certificate is attached as Exhibit "4".

15. On March 17, 2009, Moore Electric Company employee, Richard Dewayne Dueitt, Sr. ("Dueitt") tragically died in an on-the-job accident at the Olde Oak construction site.

16. As a result of the accident, Roberta D. Dueitt, as Administratrix of the Estate of Richard Dewayne Dueitt, Sr. ("Estate of Dueitt"), filed a lawsuit against various entities, including White-Spunner Construction. The case is styled *Dueitt v. White-Spunner*

Construction, Inc., et al, case number CV-2009-901356 and is currently pending in the Circuit Court of Mobile County, Alabama.

17. In paragraph 6 of its complaint, the Estate of Dueitt alleges that “White-Spunner’s liability arises out of the wrongful actions or inactions of its subcontractors and vendors, Building Materials Wholesale, Inc.; Jerry Reed Trucking; McAdams Vinyl Siding & Trim, Inc.; Livingston Construction, Inc.; and/or Buena Vista Construction, LLC., which approximately caused the death of Richard Dewayne Dueitt, Sr.”

18. White-Spunner has tendered its claim for defense and indemnity to each of the carriers based on its status as an additional insured. However, each one of the insurance defendants has failed and refused to provide a defense to White-Spunner, despite White-Spunner’s status as an additional insured and allegations of vicarious liability as a result of the conduct of each of the carriers’ insureds.

PRAYER FOR RELIEF

19. Plaintiff, White-Spunner asks this Honorable Court to declare that each Defendant has a duty to defend White-Spunner in the underlying Dueitt lawsuit;

20. White-Spunner asks this Honorable Court to declare that each carrier Defendant has a duty to indemnify White-Spunner should a verdict be rendered against in the underlying Dueitt lawsuit;

21. White-Spunner asks this Honorable Court to declare that each carrier Defendant has breached its duty to defend White-Spunner and must reimburse White-Spunner for all defense costs White-Spunner has incurred since each respective date of tender;

22. That this Honorable Court award any further relief that it deems justified.

Respectfully submitted this the 1st day of April, 2010.

/s/ Kile T. Turner

Kile T. Turner, asb-8182-u83k

**Attorney for Plaintiff, White-Spunner
Construction, Inc.**

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Addresses of all Parties

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Defendants' Addresses:

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Lima, OH 45805

Employers Mutual Casualty Insurance Company

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Des Moines, IA 50303